

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of

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	)	
	)	
Revision of Procedures Governing	)	MM Docket No. 05-210
Amendments to FM Table of Allotments and	)	RM-10960
Changes of Community of License in the	)	
Radio Broadcast Services	)	
	)	

To: Secretary, Federal Communications Commission

**REPLY COMMENTS OF  
FIRST BROADCASTING INVESTMENT PARTNERS, LLC**

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## **EXECUTIVE SUMMARY**

The comments received in this proceeding express overwhelming support for several of the Federal Communications Commission's ("Commission") proposed changes to its existing AM and FM facilities modification procedures ("Proposed Changes"). The vast majority of commenters agree that these long-overdue changes will reduce unnecessary administrative burdens while still protecting important Commission policies. Ultimately, the proposed streamlined version of the rules will enable licensees to deliver better radio service to the public in an expedited fashion. Although a few parties expressed concerns regarding some of the Proposed Changes, further analysis shows that these concerns are unwarranted; they are not supported by fact or reason. Rather, as demonstrated herein:

**The Commission should permit community of license changes by minor modification applications.** This Proposed Change will not harm the proper distribution of service or localism because it is a change in procedure only; the Commission's substantive analysis of Section 307(b) priorities will continue unaffected. Further, the public will have sufficient opportunity to comment on minor modification applications proposing community of license changes under existing public notice procedures, and these procedures easily could be supplemented if deemed necessary by the Commission. This Proposed Change also would not impair the rights of competing applicants because all applicants are equally able to propose new allotments through a rulemaking petition and past experience shows that proposals to change a station's community of license rarely result in competing proposals. Finally, Commenters' suggestion that the Commission adopt an arbitrary distance limit on community of license changes would be an inappropriate and unnecessary substantive change.

**The Commission should permit a first local service to become a new community's first local service when the public interest supports such a change.** The Commission should reject Commenters' suggestion that this Proposed Change would result in a rural-to-urban migration because: (i) several present realities, including spectrum congestion and spacing rules, effectively preclude rural-to-urban migration; (ii) there is no evidence that rural-to-urban moves would outnumber rural-to-rural changes; and (iii) the Commission's Section 307(b) priorities and related policies like *Tuck* will continue to protect rural service. Moreover, to the extent that rural-to-urban relocations do occur, they likely will further the public interest by facilitating more diverse programming in urban areas and stronger minority-ownership, as well as by promoting spectrum efficiency. Ultimately, there is no valid reason to continue prohibiting these first local service exchanges under all circumstances.

**The Commission should consider adopting additional changes to further streamline its procedures.** Commenters agree that requiring the filing of a Form 301 and fee with a petition for rulemaking would conserve Commission resources and facilitate genuine proposals that otherwise would be blocked by non-*bona fide* proposals. Given these important public interest benefits, the Commission should adopt its proposal regarding Form 301 applications and filing fees. The Commission also should adopt any similar procedural changes that will improve the overall efficiency of its procedures and, at the same time, ensure that spectrum is put to its highest and best use.

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First Broadcasting Investment Partners, LLC (“First Broadcasting”), by its attorneys, hereby submits reply comments (“Comments”) in the above-captioned proceeding regarding changes to Federal Communications Commission (“FCC” or “Commission”) procedures governing AM and FM facilities modifications (“Proposed Changes”).<sup>1</sup> As further set forth herein, enthusiastic support from parties representing every segment of the broadcast industry warrants prompt Commission action to adopt the Proposed Changes. Moreover, as the analysis provided below demonstrates, the concerns raised by a small number of commenters are unfounded. Accordingly, First Broadcasting urges the Commission expeditiously to adopt the Proposed Changes.<sup>2</sup>

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<sup>1</sup> *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, Notice of Proposed Rulemaking, FCC 05-120, MB Docket No. 05-210 (rel. June 14, 2005) (“Notice”).

<sup>2</sup> Prompt action in this proceeding also is in the public interest given that the Commission imposed a freeze on the filing of new petitions for rulemaking to amend the Table of Allotments while this proceeding is pending. *Notice*, at ¶47.

## **I. OVERVIEW**

A diverse group of commenters in this proceeding expressed overwhelming support for most of the Proposed Changes. Parties ranging from single station owners to large broadcasting group owners, as well as engineering firms and non-commercial entities, all share the Commission's belief that these changes will improve its procedures and benefit the public. Interspersed throughout this wave of support were some comments expressing concern regarding some of the Proposed Changes. In general, these comments predicted that certain Proposed Changes would negatively affect the Commission's ability to ensure a "fair, efficient and equitable" distribution of service.<sup>3</sup> Although this and related concerns are important to consider, a thorough analysis shows that they are unwarranted. The Proposed Changes are procedural in nature, and they will have no effect on the Commission's substantive policies; these substantive priorities will remain the same whether the Proposed Changes are adopted or not. Moreover, by reducing unnecessary administrative burdens, the Commission will have more time and resources to focus on its substantive policies and review of allotment proposals. Ultimately, with the Proposed Changes in place, the Commission's distribution of service will continue to be fair and equitable—and, importantly, will more efficiently serve the public interest.

For these and other reasons set forth herein, First Broadcasting continues to believe that the Commission should:

- (i) permit AM and FM community of license changes by minor modification application and adopt other procedural changes to facilitate this minor modification approach;
- (ii) permit relocation of a community's sole local transmission service to become another community's first local transmission service when the proposed multiple factors show that such an exchange is in the public interest;

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<sup>3</sup> 47 U.S.C. § 307(B).

- (iii) require rulemaking proponents to file a Form 301 construction permit application with each rulemaking petition, to certify that the proponents will bid for a proposal if it proceeds to auction, and to file all rulemaking petitions electronically; and
- (iv) consider adopting other proposed procedural changes to further streamline its procedures.<sup>4</sup>

Collectively, these Proposed Changes will ensure that improved radio service is delivered in a fair and expedited fashion. First Broadcasting's responses to certain concerns regarding the Proposed Changes are addressed individually below.

## **II. THE COMMISSION SHOULD PERMIT AM AND FM COMMUNITY OF LICENSE CHANGES BY MINOR MODIFICATION APPLICATION**

In its *Notice*, the Commission tentatively concluded that it should permit AM and FM community of license changes by minor modification application ("Minor Mod Approach").<sup>5</sup> As shown below, the majority of commenters resoundingly support the Minor Mod Approach and the concerns expressed by the limited number of commenters that do not support the Minor Mod Approach are not valid.

### **A. Commenters Support the Minor Mod Approach**

Nineteen comments, representing forty-five parties, supported the Commission's proposal to permit AM and FM community of license changes by minor modification application instead of using current procedures, *i.e.*, filing windows for AM stations and petitions for rulemaking for FM stations.<sup>6</sup> These commenters agree with the Commission and First

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<sup>4</sup> Further details regarding First Broadcasting's positions are provided in its Petition for Rulemaking ("Petition") and initial Comments, incorporated by reference herein.

<sup>5</sup> *Notice*, at ¶27.

<sup>6</sup> See Comments of American Media Services, LLC, Radio One, LLC, Mattox Broadcasting, Inc., Klein Broadcast Engineering, LLC, On-Air Family, LLC, Hunt Broadcasting, Inc., Media Services Group, Inc., Starcom, LLC, Milestone Radio, LLC, Desert West Air Ranchers Corporation, Superior Broadcasting, LLC, Four Corners Broadcasting, LLC and

Broadcasting that this procedural change would reduce delays while increasing efficiency and certainty.<sup>7</sup> Most commenters also agree that the Commission could achieve these benefits through the Minor Mod Approach without negatively impacting the Commission's obligation under Section 307(b) to ensure the fair, efficient and equitable distribution of radio service, primarily because the Minor Mod Approach is only a procedural change.<sup>8</sup> A few commenters, however, assert that negative effects would result. As shown below, these concerns are unwarranted.

### **B. Concerns Regarding the Minor Mod Approach Are Unfounded**

Section 307(b)/Localism. Some commenters opposed the Minor Mod Approach because of alleged effects it would have on the Commission's ability to fulfill its Section 307(b) obligations or on localism generally.<sup>9</sup> These comments ignore the fact that the Commission's

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Western Slope Communications, LLC ("AMS Joint Comments"), at 1-2; Apex Broadcasting, Inc., Alexander Broadcasting Co., Inc., Charles M. Anderson & Associates, Cumulus Licensing, LLC, Great South RFDC, LLC, Hunt Broadcasting, Inc., Marathon Media Group, LLC, Media Services Group, Multicultural Radio Broadcasting Licensing, LLC, Spanish Peaks Broadcasting, Inc., Wagon Wheel Broadcasting, LLC ("Apex Joint Comments"), at 3-6; Baybridge Communications, LLC ("Baybridge Comments"), at 1-3; Brantley Broadcast Associates, LLC ("Brantley Comments"), at 4-10; Bustos Media, LLC ("Bustos Comments"), at 3-4; Cohen, Dippell & Everist, P.C. ("CDE Comments"), at 4-5; Cox Radio, Inc. ("Cox Comments"), at 1-3; duTreil Lundin & Rackley, Inc. ("DLR Comments"), at 1-2; Educational Media Foundation ("EMF Comments"), at 1, 6; Friendship Broadcasting, LLC ("Friendship Comments"), at 1; Georgia-Carolina Radiocasting Co., LLC ("GCR Comments"), at 1; KM Communications, Inc. ("KM Comments"), at 2; Minority Media & Telecommunications Council ("MMTC Comments"), at 1, 7-12; Mullaney Engineering, Inc. ("Mullaney Comments"), at 3-4; New Star Broadcasting ("New Star Comments"), at 1-2; Starboard Media Foundation, Inc. ("Starboard Comments"), at 2-5; Vox Communications Group, LLC ("Vox Comments"), at 1-5; Graham Brock, Inc. ("GBI Comments"), at 1-2; Keymarket Licenses, LLC, Forever Broadcasting, LLC, Forever Communications, Inc., Mehagertz Licenses, LLC, Forever of PA, LLC ("Keymarket Joint Comments"), at 2-5.

<sup>7</sup> See, e.g., Apex Joint Comments, at 3-4.

<sup>8</sup> See, e.g., Brantley Comments, at 8-10.

<sup>9</sup> See Comments of Entercom Communications Corp. ("Entercom Comments"), at 4-8; Prettyman Broadcasting Co. ("Prettyman Comments"), at 2.



proposal has no impact on the continued applicability of Section 307(b) to community of license changes. If the FCC adopts the Minor Mod proposal, it will continue to implement its Section 307(b) mandate through its review of a detailed Section 307(b) exhibit submitted with each minor modification application seeking to change a station's community of license. In this respect, the Minor Mod Approach merely will change the manner in which Section 307(b) information is submitted. The Minor Mod Approach will have no substantive effect on the continuing applicability of Section 307(b) to community of license changes.

In fact, the Commission tacitly supported the evaluation of Section 307(b) showings on an individual basis in the 2000 AM filing window. In this context, the Commission individually evaluated Section 307(b) showings associated with AM major modification applications that were determined not to be mutually exclusive. If such an individual analysis of the compliance of these applications with Section 307(b) was sufficient to satisfy the statute's mandates, there is no rational basis to hold that a similar Section 307(b) evaluation process is somehow insufficient under the Minor Mod Approach.

Moreover, the Minor Mod Approach could help the Commission conduct more thorough and more detailed Section 307(b) analyses than it does now. Under its current procedures, the Commission often must comparatively review multiple Section 307(b) showings in an FM allotment rulemaking procedure or, in the AM service, must review hundreds or thousands of Section 307(b) showings submitted in the same filing window. The Minor Mod Approach would reduce these time pressures and comparative complexities and instead permit the Commission to review each Section 307(b) showing individually and immediately upon filing. The natural result of this procedural change would be more focused Section 307(b) reviews and, thus, increased assurance that the goals of Section 307(b) would be furthered by a particular proposal.

Finally, because the Section 307(b) priorities are intended to protect localism, processing community of license changes as minor modifications will not alter the Commission's substantive localism review. Rather, under the Minor Mod Approach, as under the current approach, the Commission may reject a proposal if the Commission determines that the proposal clashes with an allotment priority or any other localism concern.

Public Notice. Commenters also questioned whether the Minor Mod Approach would provide the public with sufficient notice and opportunity to comment regarding a proposed community of license change.<sup>10</sup> This concern is unfounded given the similarities between notices for minor modifications and allotment rulemakings. Minor modification application notices and allotment rulemaking notices both are published as part of the Commission's Daily Digest. Entries for each type of change include the station's call sign, frequency and community, thereby alerting the public of the potential change. Thus, current public notices regarding minor modifications provide as much, if not more, substantive notice to the public regarding a proposal as rulemaking public notices provide now.

Some commenters also were concerned that minor modification applications, unlike rulemaking petitions, are not subject to a 30-day minimum public comment period before they can be approved by the Commission.<sup>11</sup> In reality, the lack of a 30-day minimum period would not deprive the public of its opportunity to comment because current processing times for minor modification applications are approximately three to four months, and parties may comment upon a proposal at any time before grant. Thus, the public will have more than sufficient time in which to respond to community of license change proposals set forth in minor modification

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<sup>10</sup> Entercom Comments, at 2, 6-7.

<sup>11</sup> Entercom Comments, at 7.

applications.<sup>12</sup> Further, as with rulemaking proceedings, the Commission will have an opportunity to respond to public comments under the Minor Mod Approach. If an opposition to a minor modification application is filed, it will be reviewed by Commission staff, who then can issue a written decision addressing the reasons for accepting or rejecting a commenting party's arguments.

For the reasons set forth above, First Broadcasting believes that the current public notice procedure for minor modification applications provides ample opportunity for the public to share its concerns regarding a community of license change filed under the Minor Mod Approach. However, if the Commission believes that current public notice procedures for minor modification applications are insufficient in light of the new role that minor modification applications would play under the Minor Mod Approach, the Commission could make two simple changes to these procedures to address the problem. First, if the Commission determines that the substantive content of the current public notices is insufficient, the Commission could issue a special public notice text periodically (*e.g.*, daily or weekly) in which it highlights community of license minor modification applications separately from other minor modification applications. Second, if the fact that minor modifications can be granted at anytime remains a concern, the Commission could impose a mandatory 30-day public notice period for minor modifications seeking a community of license change. These simple and easily implemented public notice changes would fully address commenters' concerns without unduly burdening the Minor Mod Approach.

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<sup>12</sup> Because the procedures applicable to minor modification applications are less formal than rulemaking procedures, they could result in more public input regarding community of license changes rather than less.

Competing Proposals. Other concerns about the Minor Mod Approach focused on the lack of an opportunity for interested parties to file competing proposals and the associated absence of a comparative analysis.<sup>13</sup> What these comments fail to acknowledge fully is that the Commission will continue to perform a comparative analysis—it will compare the station’s present community with its proposed community.<sup>14</sup> Adding a third community or more communities to the comparison unnecessarily complicates the analysis. Moreover, the Minor Mod Approach would not have any significant effect on the rights of potential “competing proponents” until a minor modification application is filed that is mutually exclusive to the competing proponent’s proposal. Prior to the filing of such a minor modification application, all applicants are equally able to propose new allotments through a rulemaking petition at any time. Further, past experience shows that proposals to change a station’s community of license rarely result in competing proposals.<sup>15</sup> Finally, as indicated above, the lack of multiple competing proposals also will improve the Commission’s ability to engage in a focused and thorough Section 307(b) inquiry. For all of these reasons, the Commission should reject comments raising “competing proposal” concerns.

Distance Limit. Under current Commission procedures, a party seeking to change its station’s community of license effectively must propose facilities in the new community that are

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<sup>13</sup> Clear Channel Comments, at 3.

<sup>14</sup> As stated above, if operating the station in the proposed community is not a more efficient use of spectrum or otherwise is not in the public interest, the Commission may deny the requested change.

<sup>15</sup> This statement regarding the lack of competing proposals is based on First Broadcasting’s experience in past Commission proceedings; it is likely that the Commission has its own data to support First Broadcasting’s belief.

mutually exclusive to its present facilities.<sup>16</sup> First Broadcasting and other commenters support application of this mutual exclusivity limit to both FM and AM community of license change proposals. Other commenters, however, suggested that the Commission impose an additional restriction on the circumstances under which a licensee could use the Minor Mod Approach to change a community of license, *e.g.*, by adopting a hardship or distance requirement.<sup>17</sup> For example, a distance limit would prohibit relocating a station to a community more than fifty kilometers away from the current community of license.<sup>18</sup>

The most fundamental problem with the distance limit approach is that it constitutes a substantive change to the Commission's allotment policies and thus falls outside the scope of this proceeding. No distance limit currently is applicable to community of license changes by rulemaking or filing window (other than the mutual exclusivity limitation set forth above). The Minor Mod Approach merely would streamline the procedure used to change a licensee's community of license. This procedural change does not in any way justify a fundamental shift in the Commission's substantive policy regarding community of license changes—*i.e.*, the addition of a new distance restriction. Imposition of a distance limit also is unnecessary because the Commission's Section 307(b) analysis will prevent any move—over a long or short distance—that is contrary to the public interest. Ultimately, Section 307(b) and the existing requirement

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<sup>16</sup> If a party proposes non-mutually exclusive FM facilities in an FM rulemaking proposal, its existing license can become subject to counterproposals. The adoption by the Commission of such a counterproposal could result in the initial proponent losing its existing license. Few station owners are willing to take such a large risk; thus, the Commission's current procedures effectively prohibit non-mutually exclusive proposals. No such restriction currently exists with respect to AM community of license changes due to the filing window procedures used by the Commission. However, as stated in the text, imposition of the proposed mutual exclusivity restriction upon implementation of the Minor Mod Approach effectively would create an appropriate AM distance restriction.

<sup>17</sup> Entercom Communications, at 4-6.

<sup>18</sup> Comments of Robert Casserd ("Casserd Comments"), at 2-3.

that the proposed change be mutually exclusive under the Commission's technical rules will be more than adequate safeguards.

Conclusion. The Commission and the vast majority of commenters have shown that the Minor Mod Approach will result in significant public interest benefits. Further, as demonstrated above, the potential concerns expressed by opponents of the Minor Mod Approach either are nonexistent or easily are addressed.<sup>19</sup> Accordingly, First Broadcasting urges the Commission to adopt the Minor Mod Approach.

### **III. THE COMMISSION SHOULD PERMIT RELOCATION OF A COMMUNITY'S SOLE LOCAL TRANSMISSION SERVICE TO BECOME ANOTHER COMMUNITY'S SOLE LOCAL TRANSMISSION SERVICE**

The Commission currently prohibits relocation of a community's sole local transmission service to become another community's sole local transmission service (a "First Local Exchange") no matter how many other public interest factors support the change.<sup>20</sup> In its *Notice*, the Commission queried whether it instead should permit a First Local Exchange under certain circumstances.<sup>21</sup> Comments regarding this Proposed Change demonstrate that permitting First Local Exchanges is in the public interest, while opposing comments and concerns regarding First Local Exchanges are not compelling.

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<sup>19</sup> Some commenters asserted that the Minor Mod Approach would facilitate rural-to-urban moves. Prettyman Comments, at 2. This argument is addressed below in Section III.B.

<sup>20</sup> *Notice*, at ¶40 (quoting *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989)).

<sup>21</sup> *Notice*, at ¶40.

### **A. Commenters Support First Local Exchanges**

Twenty-five parties, in nine sets of comments, urged the Commission to permit First Local Exchanges under certain circumstances.<sup>22</sup> The current prohibition is contrary to the public interest because, as stated in the comments, “a flat prohibition on relocation of a community’s only local service may needlessly preclude service improvements that serve the overall public interest.”<sup>23</sup> A more balanced approach—one that considers all public interest factors along with continuity of service—would better serve the public. As shown below, specific arguments in opposition to First Local Exchanges are not compelling.

### **B. Concerns Regarding First Local Exchanges Are Unsupported**

Rural-to-Urban Moves. Commenters who oppose permitting First Local Exchanges generally predict that such a rule change would facilitate the relocation of stations from rural to more urban areas.<sup>24</sup> As an initial matter, these commenters fail to show that most First Local Exchanges typically would involve moves from rural to urban areas. It is equally possible that many First Local Exchanges will involve moves within a single rural area. For example, in some non-urban areas, a political or commercial center gradually migrates from one portion of a county to another, while the radio station must remain in the less politically or commercially

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<sup>22</sup> AMS Joint Comments, at 2-3; Brantley Comments, at 8-10; Clear Channel Comments, at 2; Cox Comments, at 6-7; DLR Comments, at 4, Figure 1 (providing maps showing distribution of service and population across United States); KM Comments, at 5-6; Mullaney Comments, at 5-6; New Star Comments, at 1-2 (supporting First Local Exchanges where current community cannot support station); Keymarket Joint Comments, at 8-10.

<sup>23</sup> Clear Channel Comments, at 2.

<sup>24</sup> Entercom Comments, at 8-9; Prettyman Comments, at 2; Comments of New World Radio (“New World Comments”), at 3.

vibrant location.<sup>25</sup> First Local Exchanges would permit moving a radio station so that it better tracks the shift in population and economic growth within a particular rural area, thereby permitting the station to better serve its intended listeners.

To the extent that parties actually seek to use First Local Exchanges to pursue rural-to-urban moves, several present realities effectively preclude the rural-to-urban migration predicted by some commenters. The most obvious natural restriction on rural-to-urban migration is spectrum congestion; the number of stations already serving urban areas often effectively prevents other stations from moving to these areas. Similarly, the Commission's spacing rules restrict the number of stations that can serve a particular urban area. Finally, and perhaps most importantly, the Commission's substantive Section 307(b) analysis<sup>26</sup> and related policies (*e.g.*, the *Tuck* factors) provide additional protection against rural-to-urban moves that are contrary to the public interest. Together, these existing policies—none of which would be substantively modified by the Proposed Changes—guarantee a proper distribution of stations between rural and urban areas.

Even if the Commission finds that a significant increase in rural-to-urban station moves is likely, it is far from clear that such a result would be problematic. Commenters who oppose First Local Exchanges apparently presume that every rural-to-urban move is contrary to the

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<sup>25</sup> One commenter in this proceeding, New Star Broadcasting, owns a station facing this very predicament. Local businesses and population have migrated to one area of the county, leaving the radio station behind in a community that no longer can support it. New Star expressed its position as follows: "There are towns of 5,000 people which don't have a station at all and a town of 350 does?...Stations this small don't want to move in to urbanized areas...[They] just [want to] move where they can be supported economically." New Star Comments, at 2.

<sup>26</sup> Because each First Local Exchange will undergo a thorough Section 307(b) analysis, its approval will be contingent upon showing that the proposal is the most efficient use of spectrum and otherwise is in the public interest, regardless of whether the exchange is from a rural to urban area, urban to rural area, or rural to rural area.



Commission's service distribution goals; however, further analysis shows that this type of relocation often promotes the public interest by ensuring that broadcast radio spectrum is put to its highest and best use. For example, permitting First Local Exchanges would make it possible for minority-owned stations—often located in exurban areas—to relocate closer to more urban areas, where more of their target audience resides.<sup>27</sup> Moving additional stations to urban areas—where the need to differentiate programming is greater and where there are more people from which to draw an audience—also will increase the diversity of programming available to the general public and to groups traditionally ignored by more mainstream radio.<sup>28</sup>

Rural-to-urban relocations also promote spectrum efficiency in at least two ways: (i) moving a station frees up vacated spectrum to be filled by a new station or by an existing station that wishes to improve its service;<sup>29</sup> and (ii) shifting stations from rural to urban areas allows the spectrum to follow the people, who have been moving to urban areas. All of these consequences demonstrate that, in many cases, rural-to-urban station relocations serve the public interest. Thus, there is no reason for the Commission to prohibit all First Local Exchanges simply because such a rule change may permit limited rural-to-urban migration.

Waiver. At least one commenter claims that Commission adoption of the First Local Exchanges proposal is unnecessary because the Commission has stated that it may permit first local exchanges “in rare cases.”<sup>30</sup> This quote is misleading, however, because the Commission typically refuses to approve First Local Exchanges absent a waiver. Further, the Commission

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<sup>27</sup> MMTC Comments, at 9-10.

<sup>28</sup> MMTC Comments, at 10.

<sup>29</sup> AMS Comments, at 8-9.

<sup>30</sup> Entercom Comments, at 9 (quoting *Application for Pacific Broadcasting of Missouri, LLC for Special Temporary Authorization to Operate Station KTKY(FM), Refugio, Texas*, FCC 03-18, at ¶7 (rel. Feb. 11, 2003)).

has stated that these exchanges generally are not permitted by waiver.<sup>31</sup> Thus, in application, the quoted phrase, “in rare cases,” effectively means “pursuant to a waiver, which we will not grant.” Therefore, it is necessary for the Commission to change its current policies to enable licensees to propose First Local Exchanges that are consistent with the public interest.

Conclusion. As demonstrated above, there is no valid reason to prohibit all First Local Exchanges under all circumstances. Under the approach suggested by First Broadcasting, the Commission could consider multiple public interest factors when deciding whether a first local service may relocate from one community to another.<sup>32</sup> Adoption of this proposal would not obligate the Commission to approve every First Local Exchange. Rather, under the proposal set forth in the *Notice*, the Commission only would permit a First Local Exchange if it is consistent

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<sup>31</sup> *Amendment of the Commission’s Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990) (“*New Community MO&O*”).

<sup>32</sup> One factor in the analysis suggested by First Broadcasting is whether the station’s proposed city-grade contour would encompass a greater population from its new community of license than from its proposed community of license. In evaluating this factor, the Commission should not, as some commenters suggest, merely compare the population of the proposed community of license to the existing community of license. KM Comments, at 6-7. Comparing populations within a community’s city limits is not an accurate way to measure whether a station will “serve” a larger population following a proposed community of license change. A more accurate measure of a station’s “home” area is the area and population served by the station’s city-grade contour. Many rural and suburban areas contain closely gathered groupings of populations that, although effectively adjacent, nevertheless are considered to reside in different “communities.” Comparing city-grade populations instead of community of license populations would permit the Commission to acknowledge this type of population distribution. For example, a station could propose to change its community of license from a community with 3,000 people to a community with 2,500 people. If the station is able to provide city-grade service to both communities from its new location, as well as to other nearby pockets of population, the Commission should not prohibit the community of license change merely because the new community of license has a smaller population than the prior community of license. This type of proposal should be encouraged rather than precluded through an undue emphasis on community of license population.

with the public interest. By adopting this more flexible approach, the Commission will be better positioned to effectuate the true intent of Section 307(b) in every situation.

#### **IV. THE COMMISSION SHOULD CONSIDER ADOPTING ADDITIONAL CHANGES TO FURTHER STREAMLINE ITS PROCEDURES**

In its *Notice*, the Commission proposed several other changes to further streamline its procedures, primarily those governing the filing of petitions for rulemaking. Commenters expressed unanimous support for the Commission's proposal to require the filing of a Form 301 application and filing fee at the time a petition for rulemaking is filed.<sup>33</sup> Commenters agreed with the Commission that these changes would conserve Commission resources by discouraging the filing of non-*bona fide* petitions.<sup>34</sup> This reduction in the number of non-*bona fide* petitions also would facilitate ultimate Commission approval of genuine proposals that otherwise would be blocked by a non-*bona fide* proposal.<sup>35</sup> Given these important public interest benefits, First Broadcasting urges the Commission to adopt its proposal regarding Form 301 applications and filing fees.<sup>36</sup>

Other proposals that received some attention in the comments also merit Commission consideration at this time. Specifically, First Broadcasting continues to support the following

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<sup>33</sup> See AMS Joint Comments, at 2; Apex Joint Comments, at 10-14; Brantley Comments, at 11; Clear Channel Comments, at 1-2; Entercom Comments, at 10; GCR Comments, at 1-2; KM Comments, at 7-8; MMTC Comments, at 7-8; NAB Comments, at 2-3; Comments of Reynolds Technical Associates, at 2-3; Starboard Comments, at 5; Vox Comments, at 6-7; GBI Comments, at 3; Keymarket Joint Comments, at 6-7. No commenter opposed these proposals.

<sup>34</sup> See, e.g., NAB Comments, at 2 (noting that current procedure "leads to processing backlogs and also distorts the options and opportunities that otherwise would be available to genuine proponents").

<sup>35</sup> See, e.g., Vox Comments, at 6-7 (noting that "hundreds of rule making petitions" filed by parties who do not intend to bid at auction "make it considerably more difficult for bona fide parties that want to propose changes...that do serve the public interest").

<sup>36</sup> Some commenters also believe that the Commission is obligated by statute to collect a fee at the time the petition for rulemaking is filed. See Apex Joint Comments, at 10-14.

changes supported in its comments: (i) permitting applicants to submit non-minor changes to the Table of Allotments (“Table”) (*e.g.*, vacant allotment channel substitutions or reference coordinate changes) with their FM community of license change applications; and (ii) removing the Table from the Commission’s rules. These changes, like those addressed above, will facilitate the Minor Mod Approach and First Local Exchanges through further streamlining of Commission procedures.

Further, First Broadcasting generally supports any additional changes that the Commission believes will improve the overall efficiency of its procedures and, at the same time, ensure that spectrum is put to its highest and best use. For example, First Broadcasting suggests that the Commission consider, among others, the following rule changes proposed in comments in this proceeding:

- Clarifying that non-commercial educational (“NCE”) stations may use the Minor Mod Approach, if adopted, to change their communities of license;<sup>37</sup>
- Eliminating the requirement for non-short spaced reference points in minor modification applications;<sup>38</sup>
- Establishing a procedure for removing nonviable allotments and permitting FM stations to surrender their licenses;<sup>39</sup> and
- Allowing the use of non-mutually exclusive channel substitutions.<sup>40</sup>

First Broadcasting supports the above-listed changes and any other changes that will further streamline Commission procedures in a manner consistent with the Commission’s overall obligation to ensure the fair, efficient and equitable distribution of radio service.

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<sup>37</sup> See EMF Comments, at 2-6; Brantley Comments, at 6.

<sup>38</sup> See GCR Comments, at 3-4.

<sup>39</sup> See Vox Comments, at 7-8.

<sup>40</sup> See Brantley Comments, at 7-8.

## V. CONCLUSION

The radio industry has spoken and its message is clear—the Proposed Changes will streamline Commission procedures in a way that benefits licensees and the public alike. Accordingly, First Broadcasting urges the Commission to adopt the Proposed Changes supported herein.

Respectfully submitted,

**FIRST BROADCASTING INVESTMENT  
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